TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:
S.B. NO. 3234, S.D. 1, RELATING TO HIGHWAY SAFETY.

BEFORE THE:
SENATE COMMITTEE ON WAYS AND MEANS

DATE: Thursday, February 21, 2008 **TIME:** 9:30 AM
LOCATION: State Capitol, Room 211
Deliver to: Committee Clerk, Room 210, 1 copies

TESTIFIER(S): WRITTEN TESTIMONY ONLY.
(For more information, please call Mark K. Miyahira, Deputy Attorney General, at 586-1160.)

Chair Baker and Members of the Committees:

The Department of the Attorney General appreciates the intent of this measure.

The purpose of this bill is to require installation of an ignition interlock device on the vehicle of a person arrested for operating a vehicle under the influence of an intoxicant that will prevent the person from starting or operating the vehicle with more than a minimal alcohol concentration while the person's case is pending and the person's license is revoked pursuant to chapter 291E, Hawaii Revised Statutes. This bill will also provide for certification of these devices and vendors and creates an indigent fund to pay for the installation and operation of these devices in vehicles of the indigent. The bill will also establish a task force to plan for the implementation of the ignition interlock device program.

The Department appreciates the intent of this measure to establish an ignition interlock implementation task force and a 2010 effective date. These provisions will permit the task force and the Legislature to resolve a number of outstanding issues prior to the implementation of the ignition interlock device program.

The Department is concerned about certain provisions currently within the bill.

In section 5, on page 12, lines 14-15, the bill amends the revocation period of a respondent, whose records shows three or more prior alcohol or drug enforcement contacts during a ten-year period from a lifetime revocation to a maximum revocation of ten years. The bill also shortens the time period when the prior alcohol or drug enforcement contacts may occur from ten years to five years.

The Department opposes these changes as these individuals pose the greatest risk to the safety of the community. If the three or more prior alcohol or drug enforcement contacts during the five years preceding the notice of the current administrative revocation are the result of three or more convictions for operating under the influence of an intoxicant within a five-year period, this individual would be currently facing a charge of habitually operating a vehicle under the influence of an intoxicant, a class C felony. A person convicted under this felony charge would be facing a mandatory license revocation for a period of not less than one year but not more than five years and would not be permitted to drive during this period of revocation in any vehicle, not even a vehicle equipped with an ignition interlock device. Therefore, this amendment could directly conflict with concurrent criminal sanctions. As such, there seems to be no logical reason to downgrade the administrative penalty for these cases from a lifetime revocation to a maximum ten-year revocation.

In section 7, the bill amends section 291E-61, by increasing the period of license revocation. Therefore, for example, a first time highly intoxicated offender would be facing a six-month to one-year license revocation under the administrative driver's license revocation process but would be facing a two-year license revocation pursuant to a criminal conviction. However, section 291E-61(c)(3), states in part that "No license and privilege suspension or revocation shall be imposed pursuant to this section if the person's license and privilege to operate a vehicle has previously been administratively revoked pursuant to part III for the same act." Therefore, an increase in the period of a license revocation pursuant to 291E-61 will have little

effect if the person has already been ordered to serve a shorter administrative revocation.

In section 7, the bill also amends section 291E-61, to authorize a court to place a criminal defendant on probation. However, section 706-624.5(2)(a), Hawaii Revised Statutes, states that as a further condition of a sentence of probation, a defendant may be sentenced to serve "five days in petty misdemeanors cases." Therefore, placing a defendant on probation would clearly conflict with the sentencing scheme in section 291E-61(b)(4)(C), where a defendant must be sentenced to serve no less than ten days but not more than thirty days of imprisonment. A sentence of probation may also conflict with the sentencing scheme in section 291E-61(b)(3)(B)(ii), where a defendant may be sentenced to serve no less than five days but not more than fourteen days of imprisonment.

In section 9, the bill amends section 287-20, Hawaii Revised Statutes, to exempt a person whose license has been suspended pursuant to section 291E-61(b)(1) through (b)(4), from having to furnish and maintain proof of financial responsibility, in order to be able to operate a motor vehicle. This amendment was made in response to concerns raised by the Department of the Attorney General and the Office of the Public Defender that section 287-20 may prevent people from being able to drive their vehicle even after being ordered to install an ignition interlock device into their vehicle. However, the amendment will not solve the problem because it only exempts a person whose license has been suspended pursuant to section 291E-61(b)(1) through (b)(4). However, as section 7 of this bill amends section 291E-61 so as to require a revocation of license and privilege to operate a vehicle, the amendment in section 9 will not exempt individuals convicted under section 291E-61(b)(1) through (b)(4) from having to provide financial responsibility pursuant to section 287-20 before being able to operate a motor vehicle.

Furthermore, the Department would like to point out that an amendment to section 287-20, exempting all individuals convicted under

section 291E-61(b)(1) through (b)(4) from having to provide financial responsibility, may have serious ramifications on the auto insurance industry. As this issue has not been addressed, the Ignition Interlock Implementation Task Force should be required to review this issue.

In section 10, this bill amends section 804-7.1, Hawaii Revised Statutes, to require the court to order a defendant, as a condition of bail, to install an ignition interlock device within 15 days, on any vehicle that the defendant will operate during the defendant's release on bail. There are two minor issues that should be clarified. The amendment may be read to apply only in cases where the defendant has been released on bail instead of also applying to cases where the defendant was released on recognizance or supervised release. The amendment also authorizes the court to issue a permit that will allow the defendant to drive a vehicle equipped with an ignition interlock device during the "revocation period." This appears to be a mistake as we assume that the author of the bill intended the defendant to be allowed to drive only while the criminal case was pending.

Therefore, the Department recommends that section 10, on page 36, lines 12 through 22, be amended to have subsection (c) of section 804-7.1, Hawaii Revised Statutes, read as follows:

"(c) In addition to the conditions in subsection (b) and except as provided in subsection (d), when the defendant is charged with an offense under section 291E-61, the court shall order as a condition of release on bail, recognizance, or supervised release that, within fifteen days, the defendant install an ignition interlock device, as defined in section 291E-1, on any vehicle that the defendant will operate during the defendant's release on bail, recognizance, or supervised release. Upon proof that the defendant has installed an ignition interlock device in the defendant's vehicle, the court shall issue an ignition interlock permit that will allow the defendant to drive a vehicle equipped with an ignition interlock device during the period of defendant's release on bail, recognizance, or supervised release."

The Department appreciates the intent of this measure to establish an ignition interlock implementation task force so long as the funding does not replace or adversely impact priorities as indicated in the Executive Supplemental Budget Request.